

Message Text

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ACTION EB-07

INFO OCT-01 EA-07 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

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FM AMEMBASSY MANILA

TO SECSTATE WASHDC 6448

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E.O. 11652: N/A

TAGS: OCLR, EAIR, RP

SUBJECT: DFA NOTE ON CLEARANCE VIOLATIONS

REF: (A) MANILA 11151; (B) STATE 188340

1. THE EMBASSY PROPOSES TO SEND THE FOLLOWING NOTE TO DEPARTMENT OF FOREIGN AFFAIRS IN RESONSE TO DFA NOTE TRANSMITTED REFTEL. DEPARTMENT COMMENTS/CONCURRENCE REQUESTED;

"THE EMBASSY OF THE UNITED STATES OF AMERICA PRESENTS ITS COMPLIMENTS TO THE DEPARTMENT OF FOREIGN AFFAIRS OF THE REPUBLIC OF THE PHILIPPINES AND HAS THE HONOR TO REFER TO THE DEPARTMENT'S NOTE NO. 75-1367 OF MAY 23, 1975.

THE EMBASSY THANKS THE DEPARTMENT FOR THE COPY OF "ATTACHMENT F" ISSUED BY THE FIRST AIR DIVISION OF THE PHILIPPINE AIR FORCE AND LISTING INFORMATION REQUIRED IN REQUESTS FOR DIPLOMATIC CLEARANCE OF AIRCRAFT. THE EMBASSY HAS WIDELY DISSEMINATED "ATTACHMENT F" AND BELIEVES THAT VIOLATIONS OF PHILIPPINES CLEARANCE PROCEDURES WILL AS A CONSEQUENCE BE MINIMIZED IN THE FUTURE.

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THE EMBASSY NOTE THAT "ATTACHMENT F" DOES NOT SPECIFY

THE SCOPE IF ITS APPLICABILITY. THE EMBASSY WIIHES IN THIS REGARD TO REFER TO CHAPTER II, ARTICLE 5, OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION,WHICH STATES THAT ALL AIRCRAFT OF THE OTHER CONTRACTING STATES, NOT ENGAGED IN SCHEDULED INTERNATIONAL AIR SERVICES, SHALL HAVE THE RIGHT TO OVERFLY OR MAKE A TECHNICAL LANDING WITHOUT PRIOR PERMISSION. ANNEX 9 TO THIS CONVENTION SPECIFIES IN PARAGRAPH 2.30.1 THAT INFORMATION CONTAINED IN A FLIGHT PLAN AND RECEIVED TWO HOURS IN ADVANCE OF ARRIVAL SHALL ORDINARILY SERVE AS ADEQUATE ADVANCE NOTIFICATION. PARAGRAPH 2.30/2 OF ANNEX 9 ADDS THAT IF, FOR REASONS OF SAFETY OF FLIGHT, SPECIAL PERMISSION IS REQUIRED IN ADDITION TO THE FILING OF A FLIGHT PLAN, THE APPLICATION FOR SUCH PERMISSION NEED NOT BE FILED MORE THAN THREE WORKING DAYS IN ADVANCE.

THE EMBASSY WOULD ALSO LIKE TO REFER TO ARTICLE I, SECTION I OF THE INTERNATIONAL AIR TRANSPORT AGREEMENT AND ARTICLE I, SECTION I OF THE AIR SERVICES TRANSIT AGREEMENT, BOTH OF WHICH PROVIDE WITH RESPECT TO SCHEDULED INTERNATIONAL AIR SERVICES THE PRIVILEGE OF FLYING ACROSS THE TERRITORY OF A CONTRACTING STATE WITHOUT LANDING AND THE PRIVILEGE OF MAKING A TECHNICAL STOP.

THE EMBASSY UNDERSTANDS WITH RESPECT TO AIRCRAFT NUMBER FOUR IN THE DEPARTMENT'S NOTE THAT A SUBSEQUENT DETERMINATION HAS BEEN MADE BY PHILIPPINE AUTHORITIES THAT THE AIRCRAFT WAS PROPERLY CLEARED FOR TRANSIT IN CONFORMITY WITH THE ABOVE AGREEMENTS.

THE EMBASSY ALSO WISHES TO OBSERVE THAT OBLIGATORY DIPLOMATIC CLEARANCE WOULD APPEAR TO BE INAPPROPRIATE FOR AIRCRAFT ENGAGED IN THE CARRIAGE OF PASSENGERS, CARGO OR MAIL FOR REMUNERATION OR HIRE ON OTHER THAN SCHE- DULED INTERNATIONAL AIR SERVICES, AS SUGGESTED BY PARAGRAPH 2.32 OF ANNEX 9 OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION. IT IS THE UNDERSTANDING OF THE EMBASSY THAT THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES HAS IN THE PAST, IN ACCORDANCE WITH THIS PROVISION, LIMITED OFFICIAL USE

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ESTABLISHED PROCEDURES NOT ENTAILING DIPLOMATIC CLEARANCE. THE EMBASSY UNDERSTANDS THAT AIRCRAFT NUMBER FIVE IN THE DEPARTMENT'S NOTE PROVIDED ADVANCE NOTIFICATION TO THE CIVIL AERONAUTICS AUTHORITY AND THE PHILIPPINE AIR FORCE IN ACCORDANCE WITH THESE ESTABLISHED PROCEDURES.

THE EMBASSY WOULD, THEREFORE, LIKE TO REQUEST CLARIFICATION AS TO PROCEDURES FOR THE IMPLEMENTATION OF

"ATTACHMENT F" AS IT RELATES TO OVERFLIGHTS AND TECHNICAL LANDINGS BY AIRCRAFT NOT ENGAGED IN SCHEDULED INTERNATIONAL AIR SERVICES. PHILIPPINE PROCEDURES HAVE IN THE PAST BEEN IN ACCORD WITH THE CONVENTION ON INTERNATIONAL CIVIL AVIATION, AND IN THE INTEREST OF CONTINUED DEVELOPMENT OF INTERNATIONAL AVIATION, THE EMBASSY HOPES THAT THESE PROCEDURES REMAIN IN ACCORD WITH THE CONVENTION WITH RESPECT TO OVERFLIGHTS, TECHNICAL STOPS, AND THE NON-APPLICABILITY OF DIPLOMATIC CLEARANCE REQUIREMENTS TO REVENUE FLIGHTS.

THE EMBASSY WOULD LIKE TO EXPRESS ITS REGRET FOR THE INCIDENTS INVOLVING VIOLATION OF PHILIPPINE FLIGHT CLEARANCES WHICH THE DEPARTMENT HAS BROUGHT TO ITS ATTENTION AND TO ASSURE THE DEPARTMENT OF ITS COOPERATION IN OBTAINING COMPLIANCE BY U.S. AIRCRAFT WITH PERTINENT PHILIPPINE REGULATIONS ON AIRCRAFT CLEARANCE.

THE EMBASSY OF THE UNITED STATES OF AMERICA AVAILS ITSELF OF THIS OPPORTUNITY TO RENEW TO THE DEPARTMENT OF FOREIGN AFFAIRS THE ASSURANCES OF ITS HIGHEST CONSIDERATION." SULLIVAN

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